IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8972 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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CHHOTA UDEPUR MINES OWNER ASSOCIATION

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8972 of 2000

MR ARUN H MEHTA for Petitioner No. 1-23

Mr.I.M.Pandya, Ld.AGP for respondents

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 15/04/2002

ORAL JUDGEMENT

Rule. Mr.I.M.Pandya appears and waives service of rule on behalf of respondents. With the consent of parties matter is taken up for final hearing.

2. Mr.A.H.Mehta for the petitioner submitted that

the impugned show cause notice is vague and it does not mention that what is the period during which the royalty is to be recovered. It is also not stated as to whether this amount which is stated in the show cause notice pertains to the exact period during which the returns were not properly filed. Mr.Mehta submitted that as per the affidavit of Shri Bhagyesh Jha, District Collector, Baroda the State Govt is the competent authority to take the decision and the present notice has been issued by the District Collector. He submitted that therefore the court should interfere at the stage of show cause notice. Mr.Mehta further submitted that as per their information, the show cause notice pertains to the period from the day one mining operations were started by the petitioner till the inspection. He submitted that it is practically impossible for any person to maintain record for the period of 15 to 20 years. Mr.Mehta submitted that if the authorities have slept over without taking any action, the petitioners can not be made to suffer and therefore he submitted that the court should interfere and quash the notice.

3. On behalf of the State Govt.Mr.Bhagyesh Jha, Dist.Collector has filed affidavit in reply and it has been mentioned that upon the inspection the following was established:

"(1) Most of the leaseholders have not prepared mining plan and thus they are not mining in accordance with the Mining Plan which breaches the rule 13(1) & (2) of the MCDR, 1998.

(2) Where, leaseholders who have submitted their mining plan in early time, has not submitted the review mining plan after every five year and thus breached rule 12(2) of the MCDR, 1998.

(3) No leaseholders have planned their mining activity in accordance with the plan. Each and every mine owner had thrown their over burden (waste material which lies above the Dolomite) haphazardly, and nobody had stored their unutilised or not sellable material separately for future beneficiation.

In the mining lease deed agreement, there is a provision for the leaseholders to pay the surface rent at a fixed rate. Which is levied for the surface in the mining lease area which was actually used by the lessee for mining activity

and removal of ore/dolomite. (Condition 4 of part V) And after completion of every year, lesseen has to submit an annual return along with Section Plan of every such pit (explored surface of mine).

No lessee had taken care to prepare such section plan in time and nobody had forwarded the same to respondent Nos 3 and 4 in time. Without going to the lease area by viewing the section plan only and its comparison with the despatch figures mentioned in the annual return, a Geologist can establish the fact that the annual returns show the correct figures of despatch are true or false. But, no lessee had taken care of this. And hence the team headed by a Geologist (Technical Officer) inspected each and every mine, took measurements of all the pits of mine(working old and dormant) took depth of pits, thickness of overburden(i.e. material, resting over actual Dolomite) took the actual measurement of the Dolomite ore actually exploited, took measurement of all the waste material dumped in the leased area, took measurement of stock of dolomite (sellable) on the pits mouth and then calculated the tonnage of actual despatch of the Dolomite from the mine area.

Further, from the despatch figures of Dolomite submitted by the lessee in their monthly returns, the respondent No.3 had worked out actual difference of the tonnage of the Dolomite which the lessee had not shown and hidden the same ultimately creating evasion of royalty in crores of rupees.

Total 31,84,223 tonnes of dolomite was thus illegally dispatched by 36 mining lease holders by creating evasion of total 8,91,58,244/- towards loyalty to the State Govt. Detailed break up of each such lease holder is annexed hereto and marked ANNEXURE II.

At the time of computation of difference of this dolomite quality, the team had taken due care of viewing past history of the mines area and those leases, which earlier were owned by some another person and later on given to existing lessee are omitted and not considered for final decision."

It is the contention of the State Govt that since during the inspection it has transpired that the royalty is not paid by the petitioner and notice has been issued.

4. Considering the rival submissions of the parties, I am of the view that unless there is inherent lack of jurisdiction the court normally would not exercise powers under Article 226 of the Constitution at show cause notice stage. In the present case the show cause notice is vague in as much as it has not been mentioned that for which period the royalty is sought to be recovered. However, at the same time, it can not be said that the Collector has no jurisdiction to issue notice. More over, if the reply is submitted the facts can well be examined by the proper authority and thereafter the competent authority can take final decision in accordance with law. It is not that in every case the final authority has to issue show cause notice. The final authority may be vested with the State Govt and the power for initiation of inquiry by show cause can be delegated to the Collector and ultimately the final decision may be taken by the competent authority but on such contention it can not be said there is inherent lack of jurisdiction. However, with a view to see that petitioners can put forward their defence properly, no prejudice will be caused to State authorities if direction is given to issue fresh show cause notice with specific details.

5. Under the circumstances, I am of the view that the following directions would meet the ends of justice:

(i) The District Collector or any other competent authority who is authorised will issue a fresh show cause notice to the petitioner on the basis of inquiry report referred to in the affidavit in reply. The said show cause notice shall be issued to each petitioner separately indicating the period for which the royalty is sought to be recovered within a period of two months from today.

(ii) After such show cause notice is served upon the petitioners, the petitioners shall submit detailed reply within a period of one month thereafter.

(iii) After the reply is submitted the petitioners shall be given opportunity of hearing and thereafter the competent authority shall take decision in the matter within a period of three months from the submission of reply.

(iv) It is also made clear that if the petitioners failed to submit reply or do not cooperate with the hearing, it will be open to the competent authority to pass appropriate orders.

6. In view of the aforesaid directions, no further order is required to be passed and this petition stands disposed of accordingly. Rule is made absolute to the aforesaid extent with no order as to costs.

15.4.2002 (JAYANT PATEL,J)